

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JAVIER ALCALA,

Plaintiff(s),

v.

MONSANTO COMPANY,

Defendant(s).

No. C 08-4828 PJH

**NOTICE OF DEFICIENCIES IN  
PLAINTIFF'S EVIDENCE AND OF  
FILING REQUIREMENT FOR MOTION  
FOR SUMMARY JUDGMENT**

**NOTICE -- WARNING TO PRO SE PLAINTIFF JAVIER ALCALA:**

You are hereby notified that based upon the court's prior review of the evidence in this case, your evidence as to causation was deficient. The complaint asserts two causes of action arising under California law : 1) general negligence and 2) products liability. The products liability cause of action is based upon the existence of "warning defects" in defendant's Roundup products. In order to prevail on these two causes of action you must prove causation, which is an essential element of every tort action. *See Merrill v. Navegar, Inc.*, 26 Cal.4th 465, 479 (2001) ("[U]nder either a negligence or a strict liability theory of products liability, to recover from a manufacturer, a plaintiff must prove that a defect caused injury"). Defendant Monsanto is not liable unless at least one of its products was a legal cause of your injury. *See Jameson v. Desta*, 215 Cal. App. 4th 1144, 1166 (2013) ("The law is well settled that in a personal injury action causation must be proven within a reasonable medical probability based upon competent expert testimony."); and *Jones v. Ortho Pharmaceutical Corp.*, 163 Cal. App.3d 396, 402-03 (1985) (same). Accordingly, you must produce expert testimony establishing causation in order to proceed to trial.

You are further notified that after a further period of discovery, Monsanto may file a

1 motion for summary judgment (dispositive motion) by which it will seek to have your case  
2 dismissed. A motion for summary judgment under Rule 56 of the Federal Rules of Civil  
3 Procedure will, if granted, end your case.

4 Rule 56 tells you what you must do in order to oppose a motion for summary  
5 judgment. Generally, summary judgment must be granted when there is no genuine issue  
6 of material fact. That is, if there is no real dispute about any fact that would affect the result  
7 of your case, the party who asked for summary judgment is entitled to judgment as a  
8 matter of law, which will end your case. When a party you are suing makes a motion for  
9 summary judgment that is properly supported by declarations (or other sworn testimony),  
10 you cannot simply rely on what your complaint says. Instead, you must set out specific  
11 facts in declarations, depositions, answers to interrogatories, or authenticated documents,  
12 as provided in Rule 56(e), that contradict the facts shown in the defendant's declarations  
13 and documents and show that there is a genuine issue of material fact for trial. If you do  
14 not submit your own evidence in opposition, summary judgment, if appropriate, may be  
15 entered against you. If summary judgment is granted, your case will be dismissed and  
16 there will be no trial.

17 The court provides this summary judgment “fair notice” pursuant to *Rand v.*  
18 *Rowland*, 154 F.3d 952, 953-954 (9th Cir. 1998) (en banc). In *Rand*, the Ninth Circuit held  
19 that pro se prisoners must be given a warning about the requirements of Rule 56 of the  
20 Federal Rules of Civil Procedure pertaining to summary judgment and the consequences of  
21 such a motion. This court routinely provides these warnings in its orders of service for  
22 prisoner pro se civil rights complaints. While a *Rand* notice is required only in pro se  
23 prisoner cases, the court finds it appropriate to provide this notice to you, a non-prisoner  
24 pro se civil plaintiffs, out of an abundance of caution.

25 The Ninth Circuit recently held that *Rand* notices must be provided at the time the  
26 motions are filed, and that notices given in advance of such motions are not sufficient.  
27 *Woods v. Carey*, 684 F.3d 934, 940-41 (9th Cir. 2012) (*Rand* notices must be given at the  
28

1 time motion for summary judgment is filed, not earlier); *Rand* at 960 (separate paper  
2 required). Accordingly, at the time that a summary judgment motion is served, Monsanto  
3 shall also serve, in a separate paper, the notice required by *Rand* as stated above.

4 Civil Local Rule 7-3 requires that you file your opposition to the motion for summary  
5 judgment no later than 14 days after the motion is served and filed. You may file an  
6 affidavit or declaration in support of your opposition, as well as a brief or memorandum  
7 which may not exceed 25 pages of text unless you file a request for permission of the court  
8 to exceed the page limit prior to the due date and the court grants your request. Any  
9 evidentiary and procedural objections to the motion for summary judgment must be  
10 contained within the brief or memorandum.

11 **IT IS SO ORDERED.**

12 Dated: August 8, 2013

  
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PHYLLIS J. HAMILTON  
United States District Judge